

EXHIBIT 12

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

-----x
TVIIM, LLC, :
Plaintiff, : Case No.:
v. : 3:13-cv-04545-VC
McAFEE, INC., :
Defendant. :
-----x

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of FRANK HAMMOND
Denver, Colorado
Thursday, December 11, 2014
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Job No.: 70758
Pages: 1 - 133
Reported By: Melanie L. Giamarco

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1 Q. Did you help direct the attorneys in any 02:46:04
2 way? 02:46:06

3 A. No. 02:46:06

4 Q. Did you ever have conversations with the 02:46:07
5 attorneys about the patent application? 02:46:09

6 A. No. 02:46:11

7 Q. Did you ever look at the patent application 02:46:11
8 after that initial review when you were considering 02:46:14
9 the HOSTCheck acquisition? 02:46:19

10 A. I'd say yes, occasionally, reference model 02:46:20
11 to the product, so . . . 02:46:28

12 Q. To the HOSTCheck product? 02:46:30

13 A. Reference model of HOSTCheck to -- as it 02:46:31
14 applies to the Secure Enclave product. 02:46:36

15 Q. You'd look at the patent application -- I'm 02:46:39
16 not sure actually what you mean by "reference model." 02:46:42

17 A. You know, are we doing this right? So here 02:46:45
18 we have a model in the patent, then we had the source 02:46:47
19 code, and so we improved on that at -- that was the 02:46:52
20 reference model, and we improved on it. 02:46:56

21 Q. Understood. 02:46:58

22 So is it your understanding that HOSTCheck 02:46:59
23 was using the ideas that were claimed in the patent 02:47:01
24 application? 02:47:06

25 A. Correct. 02:47:07

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1	Q.	And that Secure Enclave was as well?	02:47:08
2	A.	Yes.	02:47:10
3	Q.	And that HostGuard had been before	02:47:11
4		HOSTCheck.	02:47:13
5	A.	I don't know about HostGuard.	02:47:14
6	Q.	Fair enough. But you knew HOSTCheck came	02:47:15
7		from HostGuard?	02:47:18
8	A.	Correct.	02:47:19
9	Q.	Aside from using the patent application in	02:47:20
10		that fashion, did you ever refer to it otherwise over	02:47:24
11		the course of the years since first looking at it?	02:47:27
12	A.	Refer to it in what manner?	02:47:30
13	Q.	Did you ever look at it?	02:47:33
14	A.	I mean, I -- yes, I used it when I was at	02:47:35
15		Innerwall and really didn't deal with it much after	02:47:40
16		that, so . . .	02:47:43
17	Q.	But you never dealt with the folks who were	02:47:44
18		dealing with the Patent Office?	02:47:47
19	MR. GRANT:	Asked and answered.	02:47:49
20	A.	Correct. I'm not listed on the patent, so	02:47:50
21		not my -- not my issue.	02:47:53
22	Q.	(By Mr. Mueller) Do you know who was	02:47:54
23		involved in the back-and-forth with the Patent Office?	02:47:56
24	A.	I don't know exactly.	02:47:58
25	Q.	Do you know if Mr. Ricotta was?	02:47:59

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1	A. I don't know. I don't know.	02:48:01
2	Q. Were you involved in any efforts to license	02:48:05
3	the technology to other companies?	02:48:09
4	A. This technology or the --	02:48:11
5	Q. Yes.	02:48:11
6	A. -- Secure Enclave?	02:48:14
7	Q. Well, I mean, do you view there being a	02:48:16
8	difference between the two?	02:48:19
9	A. Yeah, there is a difference between the	02:48:19
10	two, which is the communication, you know, the	02:48:26
11	extension to the Secure Enclave, so I was involved in	02:48:27
12	determining the licensing of Secure Enclave with other	02:48:33
13	people, with Ricotta and with the marketing people at	02:48:39
14	the time, which, honestly, I don't remember their	02:48:46
15	names.	02:48:47
16	Q. So I have this straight, your understanding	02:48:50
17	was HOSTCheck used the ideas in the patent	02:48:54
18	application?	02:48:58
19	A. Correct.	02:48:59
20	Q. Secure Enclave took those ideas and added	02:48:59
21	additional ideas?	02:49:02
22	A. Correct.	02:49:03
23	Q. Including the two-way communication?	02:49:03
24	A. Correct.	02:49:05
25	Q. And the encrypted communication potential?	02:49:06

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1	A. Yes.	02:49:08
2	Q. And the third being the --	02:49:09
3	A. The active remediation.	02:49:12
4	Q. -- active remediation?	02:49:13
5	A. Correct.	02:49:15
6	Q. Which you defined "active remediation" as?	02:49:15
7	A. As someone taking action immediately, or	02:49:19
8	automated, completely automated.	02:49:24
9	Q. The automated remediation?	02:49:25
10	A. Automated remediation, active remediation,	02:49:28
11	so it was defined as not passive.	02:49:30
12	Q. And that was one of the concepts that you	02:49:33
13	added to what was in the patent application and	02:49:35
14	HOSTCheck?	02:49:42
15	MR. GRANT: Objection; misstates testimony.	02:49:43
16	A. The patent application for Secure Enclave.	02:49:44
17	Q. (By Mr. Mueller) Let's just back up here.	02:49:48
18	In the patent application that led to the	02:49:50
19	'168 patent, do you have that in mind?	02:49:53
20	A. Yes. Yes.	02:49:54
21	Q. And we had the original HOSTCheck.	02:49:55
22	A. Correct.	02:49:56
23	Q. And then we had Secure Enclave which took	02:49:56
24	HOSTCheck --	02:49:59
25	A. Took the ideas.	02:50:00

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1	Q. -- and added features, right?	02:50:01
2	A. Correct.	02:50:03
3	Q. Some of which are not in the patent	02:50:03
4	application?	02:50:04
5	A. Correct.	02:50:05
6	Q. And the ones that are not in the patent	02:50:05
7	application, as I understand you, were the two-way	02:50:07
8	communication, the encrypted communication and what	02:50:11
9	you describe as active remediation; is that fair?	02:50:16
10	MR. GRANT: Misstates testimony.	02:50:18
11	A. Yes.	02:50:19
12	Q. (By Mr. Mueller) Yes, that is fair?	02:50:20
13	A. That's fair.	02:50:22
14	Q. And you were licensing all of the ideas in	02:50:26
15	Secure Enclave, not just the ones that were in the	02:50:29
16	application?	02:50:31
17	A. Correct.	02:50:32
18	Q. And you were involved in that effort?	02:50:35
19	A. As -- I was involved as far -- the	02:50:36
20	involvement I had was taking the license and how do we	02:50:40
21	put that license into action in the software realm,	02:50:44
22	so, like, Apple software agreements.	02:50:52
23	Q. Did anyone license the Secure Enclave	02:50:54
24	technology from Innerwall?	02:50:58
25	A. Yes.	02:51:01

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1 Q. And who, in particular? 02:51:01

2 MR. GRANT: Asked and answered. 02:51:03

3 A. I don't remember -- the only one I remember 02:51:06
4 was Boeing, the Boeing company as far as names. 02:51:08

5 Q. (By Mr. Mueller) When a company purchased 02:51:11
6 the Secure Enclave product, were they purchasing a 02:51:13
7 license to it? 02:51:15

8 A. Yes. 02:51:16

9 Q. Innerwall was not selling the software 02:51:18
10 outright, it was selling it on a license model? 02:51:22

11 A. It was sold as -- there was a box, a server 02:51:25
12 that was delivered, and then a number of licenses in 02:51:32
13 that box, and that's how it was sold. But they -- 02:51:35
14 they ended up owning the box. 02:51:38

15 Q. And the number of licenses were -- defined 02:51:40
16 the authorization to make copies of what was in the 02:51:45
17 box; is that fair? 02:51:47

18 A. It was -- the license, the way it was 02:51:48
19 implemented was a number of licenses, and if it was 02:51:55
20 ten, then you'd install it wherever you wanted to, but 02:51:57
21 only ten would be active at a time. 02:52:01

22 Q. And was there some shutdown mechanism that 02:52:02
23 prevented it from being used if you tried to install 02:52:05
24 it on an 11th computer? 02:52:08

25 A. Not install it, but if the 11th computer 02:52:10

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1 tried to talk to the system and it wasn't licensed, it 02:52:12
2 wouldn't talk to it. 02:52:16

3 Q. The software had a limit built within it? 02:52:17

4 A. Had a limiter in it. 02:52:19

5 Q. And the number of users was defined by the 02:52:22
6 scope of a given license? 02:52:24

7 A. Yeah, just a number. 02:52:27

8 Q. And then you would tailor the software 02:52:30
9 accordingly to limit it to whatever the license number 02:52:32
10 was? 02:52:35

11 A. It was a parameter. We just put in a 02:52:36
12 parameter and . . . 02:52:39

13 Q. And I think you testified earlier, you 02:52:44
14 don't remember the pricing? 02:52:47

15 A. I don't remember what the prices were. 02:52:48

16 Q. Did you review particular licenses before 02:52:49
17 they were executed, or during the process of 02:52:52
18 negotiating them? 02:52:54

19 A. No. 02:52:55

20 Q. Who would have referred those -- reviewed 02:52:56
21 those? 02:52:59

22 A. That would have been -- I was more a sales 02:52:59
23 engineer, and that would have been one of the 02:53:05
24 salespeople in sales and probably -- that's 02:53:07
25 speculation. Sales. 02:53:13

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1 Q. So now I want to distinguish on the one 02:53:14
2 hand between licenses to the software provided to a 02:53:19
3 software customer on the one hand -- 02:53:24

4 A. Okay. 02:53:26

5 Q. -- versus giving a company a license to the 02:53:27
6 intellectual property, only with no accompanying 02:53:29
7 software -- 02:53:32

8 A. Right. 02:53:33

9 Q. -- on the other. Do you have that 02:53:33
10 distinction in mind? 02:53:35

11 A. I do. 02:53:35

12 Q. Did you ever make any efforts in the second 02:53:36
13 category of trying to license the intellectual 02:53:38
14 property -- 02:53:39

15 A. No. 02:53:42

16 Q. -- without software? 02:53:42

17 A. No. 02:53:43

18 Q. It was always just part of a software 02:53:43
19 transaction? 02:53:46

20 A. Correct. 02:53:47

21 Q. When you first looked at the application 02:53:53
22 that led to the '168 patent, did you or anyone else at 02:53:55
23 Innerwall investigate the chain of ownership for that 02:54:00
24 application? 02:54:04

25 A. For this application? 02:54:05

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1	A. I have not.	03:57:04
2	Q. And you don't recall any formal written	03:57:07
3	policy at Innerwall regarding marking?	03:57:09
4	A. No.	03:57:12
5	Q. And you don't recall any specific efforts	03:57:13
6	to mark Secure Enclave or any of the Enclave products	03:57:14
7	with patent application numbers or patent numbers?	03:57:19
8	A. No, I don't remember if that was on the	03:57:23
9	documentation or not.	03:57:25
10	(Exhibit 17 was marked for identification.)	03:57:44
11	Q. (By Mr. Mueller) Exhibit 17 is titled	03:57:45
12	"Enclave: Beyond Traditional Perimeters. " Have you	03:57:51
13	seen this before?	03:57:58
14	A. (Reviewing document.) Yes, I've seen this	03:58:11
15	before. It's very old.	03:58:17
16	Q. What is it?	03:58:17
17	A. It's one of -- it's one of the initial	03:58:21
18	documents that was more as a road map or a map,	03:58:23
19	product road map and then, you know, the description	03:58:28
20	of the technology and what it does. Yeah, this is one	03:58:34
21	of the very first -- older ones.	03:58:41
22	Q. And this was intended to show where the	03:58:43
23	product was going as opposed to where it was?	03:58:46
24	A. Yes. Yeah, because they -- yeah. 2005,	03:58:48
25	that would have been just after the -- after the money	03:59:09

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1 came in, Series A, a lot of marketing changes and 03:59:12
2 mark . . . 03:59:21

3 Q. And do you recall how that -- Series A 03:59:22
4 investments related to the product releases 03:59:26
5 chronologically, you know, which came first as among 03:59:31
6 the first release, second release, third release, and 03:59:37
7 the Series A financing? 03:59:40

8 A. Well, the Series A financing came in early 03:59:41
9 2005, so the first releases were 2003, and then second 03:59:43
10 and third release were after the first ones, so -- 03:59:49
11 I -- I don't remember what was going on after the -- 03:59:59
12 as far as release dates and versions after the money 04:00:02
13 came in. 04:00:05

14 (Exhibit 18 was marked for identification.) 04:00:12

15 Q. (By Mr. Mueller) Exhibit 18 is titled 04:00:15
16 "Secure Enclave Overview." Have you seen this before? 04:00:26

17 A. Yes, I remember this. 04:00:30

18 Q. What is it? 04:00:32

19 A. Again, it's more explanation of the 04:00:33
20 product, marketing explanation. This one looks like 04:00:44
21 it's directed more towards, after the money came in, 04:00:48
22 some of the newer clients, maybe, more on the military 04:00:53
23 and DOD side. 04:00:56

24 Q. Is this, again, more of a road map-type 04:00:57
25 document as opposed to describing the existing 04:00:59

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1	functionality?	04:01:03
2	A. There's some existing and some new, some	04:01:06
3	looking at a future thought.	04:01:09
4	(Exhibit 19 was marked for identification.)	04:01:16
5	Q. (By Mr. Mueller) Exhibit 19 is titled	04:01:17
6	"User Manual Revision 1.0, May 2006, Secure Enclave	04:01:29
7	Version 3.1." Have you seen this before?	04:01:35
8	A. Yes.	04:01:38
9	Q. Is this, in fact, a user manual for Secure	04:01:39
10	Enclave Version 3.1?	04:01:44
11	A. Yes. Yes.	04:01:49
12	Q. Does this appear to be a true and correct	04:01:51
13	copy of that document?	04:01:52
14	A. Yes.	04:01:57
15	Q. And was this generated in the ordinary	04:01:58
16	course of Innerwall's business?	04:02:00
17	A. Yes.	04:02:01
18	Q. And was this intended to be descriptive of	04:02:02
19	existing functionality of Secure Enclave as of the	04:02:07
20	time of its creation?	04:02:10
21	A. Yeah, this would have been specific to that	04:02:12
22	version functionally and operationally.	04:02:16
23	Q. And is that date consistent with your	04:02:19
24	memory, May 2006?	04:02:23
25	A. It would have been after the money, so yes.	04:02:25

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1 And the marketing -- the way this looks, it would have 04:02:33
2 been in that time period, so . . . 04:02:35

3 Q. And you testified earlier that for -- well, 04:02:58
4 pricing and licensing negotiations, those were not 04:03:01
5 within your direct responsibilities? 04:03:04

6 A. No, they weren't. 04:03:06

7 Q. And you weren't involved in negotiations 04:03:17
8 concerning the terms by which EIM purchased Innerwall 04:03:19
9 assets? 04:03:26

10 A. No, I wasn't. 04:03:26

11 (Exhibit 20 was marked for identification.) 04:03:39

12 Q. (By Mr. Mueller) Exhibit 20 is a U.S.A. 04:03:41
13 Patent 8,239,917 that lists, I believe, you as the 04:03:50
14 lead inventor; is that right? 04:03:56

15 A. Correct. 04:03:59

16 Q. Do you recall this patent? 04:03:59

17 A. I do. 04:04:00

18 Q. What does it relate to? What work is it 04:04:00
19 based on? 04:04:03

20 A. This work is based on the extensions that 04:04:03
21 we've talked about in communications and a bigger 04:04:08
22 enterprise-management solution. 04:04:12

23 Q. This patent relates to the -- the additions 04:04:16
24 to HOSTCheck? 04:04:21

25 A. Yeah. Yeah. I'd say the additions to a 04:04:23

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1 system that allowed a HOSTCheck-like functionality. 04:04:35

2 But I think this one -- I haven't read this in a long 04:04:38

3 time. It may refer to the other patent, to the 04:04:40

4 Noochee patent. 04:04:43

5 Q. This listed Mr. Ricotta as the second named 04:04:44

6 inventor. 04:05:01

7 A. Yeah. 04:05:02

8 Q. What was his role from a technical 04:05:02

9 perspective? 04:05:03

10 A. Technical -- technically we were just -- a 04:05:04

11 lot of this, what do you call these, processes, the 04:05:08

12 order processes and things like that, it was a team 04:05:19

13 effort to put all that together and think through the 04:05:20

14 problems, so that's why they're all listed. That's 04:05:25

15 why he's listed. 04:05:29

16 Q. Are you a named inventor on any other 04:05:41

17 patents? 04:05:44

18 A. There was one other patent that goes along 04:05:44

19 with this one, but -- it was granted, but I believe it 04:05:50

20 was disallowed after that. It was on zero knowledge. 04:05:54

21 Q. I'm sorry. Say that again? 04:06:01

22 A. There was one on zero knowledge that was 04:06:02

23 granted and then revoked or -- I don't know what you 04:06:03

24 call it, but . . . 04:06:06

25 Q. And what is "zero knowledge"? 04:06:07

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1 A. The ability to -- computers or agents to 04:06:09
2 connect without knowledge of the other. 04:06:15

3 Q. Got it. A few more questions. 04:06:18

4 Are you familiar with something called 04:06:28
5 ThinkVillage? 04:06:30

6 A. Yes. 04:06:31

7 Q. What is it? 04:06:31

8 A. It's an intellectual property broker, I 04:06:32
9 guess would be a good way to term it. Yeah. 04:06:40

10 Q. And how did you first learn of 04:06:47
11 ThinkVillage? 04:06:48

12 A. I worked on their Web site when they first 04:06:49
13 started. 04:06:55

14 Q. And who commissioned you to do that work? 04:06:57

15 A. That was Curtis. 04:07:00

16 Q. Curtis Vock? 04:07:01

17 A. Curtis Vock, yes. 04:07:03

18 Q. And how did you first meet Curtis Vock? 04:07:04

19 A. I first met him working on -- on these 04:07:06
20 patents for the Noochee -- or sorry, Innerwall, 04:07:11
21 Innerwall solutions. 04:07:15

22 Q. And he was working on -- in a 04:07:16
23 patent-prosecution capacity, meaning helping with the 04:07:21
24 actual patent filings? 04:07:24

25 A. Yes, he was actually working on these 04:07:25